

United States District Court
Eastern District of Wisconsin

Brown v. City of Milwaukee
18 CV 922



Video Deposition of

Erik Andrade

Recorded 05/10/2019 in Milwaukee, WI
9:18 am - 11:16 am, 104 mins. elapsed

Magne-Script

(414) 352-5450

22364 Standard transcript with Index

Video Deposition of Erik Andrade 5/10/2019

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Witness

Erik Andrade

Friday 05/10/2019 at 09:00 by: Jeff Joseph

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Milwaukee, WI 53202

Brown v. City of Milwaukee

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A P P E A R A N C E S

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1 they were going to go back to her house because it
2 wasn't far from there. And, yeah, she said that was
3 their first date and things were going well. She just
4 met him that night online.

5 Q And what did she say about Officer Grams?

6 A I think he came over like as a -- I don't know her
7 exact words, but aggressive or confrontational.
8 And...

9 Q You were aware that -- from her that Officer Grams
10 actually had physical contact with Mr. Brown first,
11 correct?

12 A According to her, yes. That's what she said. Like, I
13 know there was some altercation that took place
14 between them.

15 Q And when you talked to your investigators after the
16 fact, were you curious as to why they weren't asking
17 you about what you knew about Officer Grams?

18 A I guess I didn't really think much about it.

19 Q I mean, they never asked you, right?

20 A Not that I recall.

21 Q Right? They didn't say, "What did you learn from the
22 witness about what Officer Grams was doing?" right?

23 A Uh-huh. Yes, sir.

24 Q They weren't even curious as to whether or not the
25 witness had identified Officer Grams as pushing and

1 touching Mr. Brown first, correct?

2 A Yes, sir. I was never asked.

3 Q Officer Samardzic, I met him yesterday and he told me
4 about this remedial training that everybody went to.

5 A Yes, sir.

6 Q About the incident. You were there, correct?

7 A Yes, sir.

8 Q Tell me, I'm trying to put together everybody that was
9 there. I've asked your lawyer to put that list
10 together, but we don't have that yet. So first of
11 all, where did this remedial training take place?

12 A At the Safety Academy. I do not recall the address,
13 but, you know, if that's relevant.

14 Q Okay.

15 A But the chapel room, which I don't know the number,
16 but it's the first floor of the Safety Building.

17 Q Okay. And who do you recall being there?

18 A Both immediate supervisors that were on the scene, so
19 Sergeant Mahnke and Sergeant Krueger.

20 Q So everybody --

21 A Yeah.

22 Q All the officers and the --

23 A Yes.

24 Q -- two sergeants --

25 A To save you --

1 Q -- that were on the scene.

2 A -- some time. Yes, sir.

3 Q Okay. And then my understanding is that there were
4 quite a few other people, too.

5 A Yeah. I believe some. I know the captain of District
6 2.

7 Q Okay. Who is that?

8 A Alex Ramirez, Lieutenant Shelley Metzler.

9 Q Okay.

10 A Lieutenant Jesus Ortiz.

11 Q Okay.

12 A And there might have been a couple more. I don't
13 recall exactly because -- yeah.

14 Q And how long was this meeting or training?

15 A Went a good, I want to say, probably over three hours.

16 Q And just sort of give me an overview of what occurred
17 during the three hours and then we'll get into it in
18 detail. Okay?

19 A Yes, sir. We broke down video, like almost frame by
20 frame, stopping it to explain what should have been
21 done different, you know, what could be improved.
22 Like pretty much critiquing everything. And then we
23 had like a -- I'm sorry. You're still writing.

24 Q Go ahead. Go ahead. I'm listening.

25 A We went through like after, you know, people stuck

1 around and talked. I believe -- I don't recall who
2 presented. I think one was Detective Metz.

3 Q Okay.

4 A And -- oh, Officer Kai Anderson. They were the
5 instructors going through and breaking down
6 everything. But, yeah. Then we stuck around and kind
7 of just talked about different issues, not pertaining
8 to the case. I don't know. Just different use of
9 force scenarios and situations.

10 (Exhibit 35 identified)

11 Q I'm going to show you what has been -- what I've
12 marked as Exhibit 35. This is a transcript of your
13 sworn testimony on December 19, 2018. And I want you
14 to turn to page 449 there. You see, on line 13,
15 you're under oath and you say, "I have no problem
16 saying that the officers handled the situation wrong."

17 A Yes, sir.

18 Q And you had said that under oath, correct?

19 A Yes, sir.

20 Q Okay. So I want you to -- because when I read it,
21 nobody asked you at the hearing --

22 A Yes, sir.

23 Q -- what the officers did wrong. I want to have you
24 have your opportunity to tell us what the officers did
25 wrong.

1 A You ready?

2 Q Yep.

3 A Well, the whole approach from the beginning. If it
4 was me, and I can only speak from my point of view --

5 Q Yeah. I just want you --

6 A Okay.

7 Q No one asked you.

8 A Yep.

9 Q Just tell the jury, what did the officers do wrong?

10 A The initial contact, I believe, could have been more
11 professional, more, can I say, courteous, you know,
12 how to talk to the public could have been a lot
13 better. I personally wouldn't have said that, or
14 approached the whole situation like that. If I would
15 have been the initial officer, we would never be here
16 today; I'll tell you that. As far as putting all the
17 pieces together, I would have had a better briefing,
18 make sure everybody is still on the same page. And
19 then you go over, as a supervisor, what was done
20 wrong, what was done right, what can be improved,
21 because it was kind of a very uncoordinated situation,
22 even after what took place, or after these whole use
23 of force.

24 Q So the -- I want you to sort of break it down. And
25 the -- is part of what you identify as what the

1 officers did wrong tied to the training that you had
2 when everybody went through the whole incident?

3 A Yep. I'd say the main thing is about, you know, they
4 train you on de-escalation and escalation. When you
5 approach any subject on the street for any situation,
6 you know, the whole point is to de-escalate so you
7 don't have to use force at all. That's the whole
8 goal, as any police officer, or it should be. You
9 know, right from the beginning, you know, Officer
10 Grams, we'll start there.

11 Q Yeah. Let's just --

12 A Well, we'll start there. Sorry. I know I'm a
13 little...

14 Q Yep. Yeah. Just go ahead. Break it down.

15 A Officer Grams' initial contact, like I don't have
16 don't have a problem with Grams personally, he's
17 always respectful to me, but as a police officer and a
18 person on the outside looking in, it's -- he should be
19 professional. I guarantee if he would have just
20 walked up and identify yourself as a police officer,
21 give him the reason why you're there, like you're
22 trained and supposed to, I think that sets the tone
23 for everything, and I don't think we'd even be here if
24 that was the case. And then -- oh, I'm sorry. Go
25 ahead.

1 Q No. Go ahead. Go ahead.

2 A And like I said, after reviewing the -- you know, it's
3 easy once you look at the film, you know, especially
4 as a police officer, you're taught not the Monday
5 morning quarterback, but, you know, why we went
6 through that whole training and remedial, gave me the
7 point of view, because there's a lot of stuff I didn't
8 see initially because, like I said, I wasn't there
9 during the -- I didn't catch like from beginning to
10 end everything that happened. So supervisors should
11 have -- I feel should have worked on some de-
12 escalation as well, as far as getting everyone on the
13 same page. I didn't feel the threat level was as high
14 as everybody seemed to make it. It was a slow, cold
15 night, and there was some mixup with the calls,
16 because I believe they even sent us to the wrong
17 address, like some -- like two calls got mixed
18 together, so a bunch of officers were going to one
19 place, someone was calling. I believe there was like
20 an assist somewhere else. And anyways, they got
21 cross-called. So there was a lot of officers there
22 that didn't need to be there and that's why I was, me
23 and Jensen, were on our way out as that whole thing
24 took down, because our threat assessment was way down
25 here.

1 So I believe the supervisor should have
2 controlled the scene a little better, as far as like,
3 you know, staffing. Obviously, I don't see the
4 threat, high threat level, you know, release some
5 officers there. I mean, that way you're not
6 surrounding someone with ten cops. I mean, I'm a cop
7 and I wouldn't want all these cops just surrounding
8 me.

9 And use of force, James Collins standing on Mr.
10 Brown's leg, I mean, those are his money-maker. You
11 know, that's not a trained technique. Well, I guess
12 I've never stood on someone's leg. I mean, we brace
13 on my -- I kind of feel bad because, you know, when
14 there's use of force, I instructed Officer Jensen, you
15 know, to, you know, stabilize the legs, but, like I
16 said, we're trained to go down there and, you know,
17 not stand on someone but hold his legs against the
18 ground in case he did kick. But obviously Jensen
19 didn't hold him long because, like I said, the threat
20 was minimal at that point. But at first, I didn't
21 know why he was put down and what took place because I
22 was inside my vehicle. So it wasn't until after that
23 that I realized, okay, this is not as serious as
24 everybody is making it.

25 Q Explain that last thing. I didn't understand.

1 A Like I explained earlier, the threat assessment was
2 way down. I had -- I didn't fear.

3 Q It would be fair to say that while you were on the
4 scene, you never saw Mr. Brown act aggressively toward
5 any officer, correct?

6 A Yes, sir. From my point of view.

7 Q And in terms of your observations, you observed Mr.
8 Brown being surrounded, grabbed, taken down, tased,
9 and stepped on, correct?

10 MS. GEHLING: Objection. Mischaracterizes
11 testimony.

12 Please answer.

13 A From what I -- can you say that again, sir, one more
14 time? I'm sorry.

15 MS. GEHLING: Play it back for you.

16 THE REPORTER: Okay. Stand by.

17 (Question played back)

18 THE REPORTER: Okay. Please continue.

19 A Yes, sir.

20 BY MR. THOMSEN:

21 Q And based on your training -- and we'll get to the use
22 of force policy -- that what you witnessed was
23 inconsistent with your training, correct?

24 A Yes, sir.

25 Q And you would agree that it was an unreasonable use of

1 force, correct?

2 MS. GEHLING: Objection. Mischaracterizes
3 testimony.

4 A Like I said, from my point of view, I wasn't the only
5 officer around. As far as the whole use of force in
6 general, I don't know everything with everything
7 taking place, if I would agree with that.

8 BY MR. THOMSEN:

9 Q I just need a breakdown. Okay?

10 A Okay.

11 Q I read your transcript under oath that it was wrong.
12 Okay?

13 A Yeah.

14 Q And I need to know what you're going to tell the jury.
15 That's why I'm here. So would you agree that this was
16 an unreasonable use of force, yes or no?

17 A As far as stepping on the ankle, yes. But like I
18 said, as far as like, I mean, there was certain orders
19 for him, you know, take your hands out of your pockets
20 and...

21 Q Mr. Brown was removing his hands.

22 A Okay.

23 Q Right?

24 A Like I said -- I watched the video.

25 Q I'm sorry?

1 THE REPORTER: I'm sorry. I didn't get
2 that.

3 A I wasn't like right there when all this stuff was
4 happening. I saw it afterwards in the video. So I
5 believe there could have been some justification to
6 it, but as far as standing on ankles and certain
7 things, how it all took place, there are some issues I
8 have with that.

9 BY MR. THOMSEN:

10 Q Well, let's go back to break it down in this training.

11 A Okay.

12 Q There was discussions about Officer Grams approaching
13 Mr. Brown, correct?

14 A Yes, sir.

15 Q And they stopped the video and they showed you where
16 Officer Grams actually had first contact with Mr.
17 Brown, correct?

18 A Yes, sir.

19 Q And they pointed out that that was inappropriate,
20 correct?

21 A Yes, sir.

22 Q And to have inappropriate contact with any person,
23 that would be an unreasonable use of force, correct?

24 MS. GEHLING: Objection. Calls for a legal
25 conclusion, lack of foundation.

1 MR. THOMSEN: I'm not asking for a legal --

2 MS. GEHLING: Lack of foundation.

3 BY MR. THOMSEN:

4 Q I'm asking you what you're -- how you're trained.

5 Okay? I'm trying to find out.

6 A Yeah. And I'm not trying to give you a hard time.

7 I'm not.

8 Q I'm with you. So I just need straight answers on
9 this. Okay? You're at the training, they're breaking
10 it down.

11 A Yeah.

12 Q Right? They said that this was inappropriate,
13 correct?

14 A The first contact, yes.

15 Q Right. And they specifically said this is not a
16 reasonable use of force, correct?

17 MS. GEHLING: Objection. Assumes facts not
18 in evidence.

19 Please answer.

20 A I don't know if they said the actual use of force was
21 inappropriate. I don't recall if they said that
22 exactly.

23 BY MR. THOMSEN:

24 Q Okay. But you do remember that either -- that you
25 think it was Detective...

1 A Detective Metz.

2 Q Detective Metz was doing the main talking?

3 A Yes, sir.

4 Q So Detective Metz said it was wrong for Mister -- I
5 mean, for Officer Grams to touch Mr. Brown.

6 A Yes, sir.

7 Q Tell me about the discussions they had about his use
8 of language. You recall that, right?

9 A Yes, sir. It was inappropriate.

10 Q Right. They specifically --

11 A Yeah.

12 Q -- went through, correct?

13 A Yes, sir.

14 Q That Officer Grams' use of language --

15 A It was not professional.

16 Q -- and his saying, "I own this," correct?

17 A Yes, sir.

18 Q Yes?

19 A Yes, sir.

20 Q And they said that was not only unprofessional, but it
21 was racially charged, correct?

22 A I don't know if they said "racially charged." I don't
23 recall them saying "racially charged."

24 Q You just remember that they pointed out that Officer
25 Grams should not have said that.

1 A Yeah. It was unprofessional.

2 Q Okay. You weren't there, obviously, when that took
3 place, correct?

4 A No, I wasn't.

5 Q But when you saw the video, you would agree with me
6 that it was racially charged, correct?

7 MS. GEHLING: Objection. Argumentative.
8 Please answer.

9 A I know Joe Grams personally. I know he's not racist,
10 so I don't believe that was racially charged.

11 BY MR. THOMSEN:

12 Q So how do you account for -- you said that if you
13 would have approached Mr. Brown, we wouldn't be here
14 today, correct?

15 A Yes, sir.

16 Q So how do you justify Officer Grams' conduct if you
17 don't say it's racist, because it seems to me that's
18 the only reason why we're here.

19 MS. GEHLING: Objection. Argumentative.

20 A Because I know him and I know how he talks to the
21 public and it doesn't matter what ethnicity that
22 person would have been.

23 BY MR. THOMSEN:

24 Q So he just runs around saying, "I own it," to every
25 body?

1 A Not that I know of.

2 Q Okay.

3 A I mean, some of the encounters I've come across, he's
4 kind of abrasive to people when it comes to
5 professional communication.

6 Q So let's look at this objectively, right?

7 A Yes, sir.

8 Q That's what they're teaching you, right?

9 A Yes, sir.

10 Q Objectively, when you have a white officer approaching
11 a young African-American man in a parking lot for a
12 parking ticket --

13 A Yes, sir.

14 Q -- to say, "I own it," and actually then have had
15 contact, that is racially charged, correct?

16 MS. GEHLING: Objection. Foundation.

17 A I don't believe so.

18 BY MR. THOMSEN:

19 Q Let's put it this way: you could certainly see how one
20 could perceive it that way, correct?

21 A Yes, sir.

22 Q Okay. Was that the first stop of the -- you said the
23 video, they ran it.

24 A That's the first stop for a long time, and replayed
25 it.

1 Q What were all the different things that went through
2 with that?

3 A As far as what, like just comments?

4 Q Yeah. I'm trying to figure out everything that
5 detective pointed out that was --

6 A Like I said, it was like started immediately, like I
7 said, the professional communication as, you know,
8 we're trained to, you know, introduce yourselves
9 courteously and professional. I mean, that sets the
10 tone for any interaction, whether you're a police
11 officer or someone meeting someone for the first time.
12 I mean, first impressions, everything, you set the
13 tone with that. Like I said, you come at someone the
14 right way, professional, there's no reason to be mad.
15 Some people get mad anyways, but as a police officer,
16 you're still supposed to be professional and talk to
17 them. It will still help. Maybe not de-escalate but
18 further escalate it.

19 Q So it was Detective -- you said Metz, right?

20 A Yes, sir.

21 Q Made it very clear that if Officer Grams would have
22 acted appropriately consistent with the training, he
23 would have just given Mr. Brown the warning and you
24 wouldn't be here today, correct?

25 A Yes, sir. We talked about -- yes, sir.

1 Q And it would be -- I'm assuming, then, Detective Metz
2 said because if Mr. Brown should have just had a
3 warning and just driven away with his date, the fact
4 that he was subsequently attacked, arrested, resulted
5 in a violation of his constitutional rights, correct?

6 MS. GEHLING: Objection. Assumes facts not
7 in evidence, argumentative, foundation.

8 A It was just a parking violation. Mr. Brown reasonably
9 could have just got in his vehicle, if allowed to, and
10 drove off. I mean, you got a plate.

11 BY MR. THOMSEN:

12 Q All I'm saying is the fact that he wasn't just allowed
13 to drive off resulted in a violation of his
14 constitutional rights, correct?

15 MS. GEHLING: Objection. Argumentative,
16 foundation. He's not a lawyer.

17 MR. THOMSEN: You're right. He's not a
18 lawyer.

19 Q Right? You're an officer, right?

20 A I was.

21 Q I'm sorry. You took an oath to uphold the
22 Constitution, right?

23 A Yes, sir.

24 Q You have received extensive training on people's
25 constitutional rights, correct?

1 A Yes, sir.

2 Q Based on the training that you received, you would
3 agree with me that because he wasn't allowed to leave,
4 his constitutional rights were violated, correct?

5 A Yes.

6 Q So let's go back to the training.

7 A Yes, sir.

8 Q Where Detective Metz was going through the different
9 ways that officers' conduct was inappropriate. Okay?

10 A Yes, sir.

11 Q Have we covered everything that was discussed at the
12 training about -- during that first stop, about what
13 was wrong with Officer Grams' initial contact with Mr.
14 Brown?

15 A Nothing comes to mind, further touching or, you know,
16 it's a parking violation. If you want to stop someone
17 furthermore, you have to have, you know, articulation
18 why you're doing more than what you're supposed to do.
19 Because technically, it is a parking violation. You
20 grab a plate. If they decide to drive off, we'll mail
21 you your ticket to whoever owns the car.

22 Q So there was a full discussion that there was no
23 articulation of any reasonable suspicion, correct?

24 A Yes, sir.

25 Q And Detective Metz went through that and pointed that

1 out, correct?

2 A Yes, sir.

3 Q What else? Anything else with respect to Officer
4 Grams?

5 A I think we talked about the professional
6 communication, the reasonable first stop, and
7 articulation, why you're stopping someone.

8 Q So they focused on three things, correct? The one
9 was, first of all, you can't have any contact with the
10 person, correct?

11 A You have to be able to justify it if you do.

12 Q Okay. And in this case, Detective Metz was very clear
13 that there was no justification for Officer Grams
14 being hands-on with Mr. Brown, correct?

15 A Yes, sir.

16 Q Number two is that there was a full discussion of the
17 inappropriateness of his language with respect to Mr.
18 Brown, correct?

19 A Yes, sir.

20 Q And that would be in terms of how Mr. Brown or the
21 public may perceive that language, correct?

22 A Yes, sir.

23 Q And Detective Metz pointed out that one could perceive
24 it in a racial way, correct?

25 A Yes, sir.

1 Q And then, three, Detective Metz said there was no
2 articulable reasonable suspicion of any crime,
3 correct?

4 A Yes, sir.

5 Q Okay. And all those go to your training in terms of a
6 person's constitutional rights, correct?

7 A Yes, sir. Just as stated in some of the SOPs that are
8 listed here.

9 Q Did Detective Metz go through the SOPs that were
10 violated at the training?

11 A I do not recall, to be exact, but I know there was
12 some paper. I just -- it was long ago. I don't
13 remember.

14 Q That's fair enough. And I've asked your lawyer to see
15 if we can get all the paper that they showed you
16 there. Okay. So then the next pause and stop, what
17 do you recall?

18 A I'm trying to replay it in my head. I believe it was
19 the -- when they're around him and talking to him, and
20 I guess they tell him, you know, take your hands out
21 of your pockets. And I don't -- I think it was -- I
22 don't recall his exact response or, "Hold on," or, "I
23 have something. Hold on," and then they yell it
24 again. I believe it was one of the supervisors. And
25 he says, "Hold on," and then, yeah, I believe they go

1 hands-on, tussling, get him to the ground, or on his
2 way down, they had tase him, got him in the lower
3 back. And then I don't know exactly what they said,
4 but as far as like -- like I said, I mean, just
5 surrounding him when the threat level -- I mean, I
6 guess that's -- I think that's when they talked about,
7 like, you know, the threat assessment level, you go,
8 we're trained, you know. You always want to be one
9 up. But, I mean, he wasn't -- they said they feared
10 because his hands were in his pockets. Is it common?
11 Yes. So I can see both sides, to be honest.

12 Q Did they -- did Detective Metz go through the video
13 showing that he had his hands in and out of his
14 pockets?

15 A Not that I recall. I'm sorry.

16 Q And it was a cold night, right?

17 A Yes, sir.

18 Q Right? So there was -- right? If it's a cold night,
19 people are going to put their hands in and out of
20 their pockets, correct?

21 A I totally understood it, yes, sir.

22 Q And did any officer at this meeting articulate any
23 fear that they ever had about anything in his pocket
24 before they went on to him?

25 A I believe some of the officers talked about targets,

1 some shot targets in the back of his car. But like I
2 said, I didn't -- I've never seen them. I didn't go
3 up to his car, like, you know, I wasn't one of the
4 main investigating officers. I was actually on my way
5 leaving.

6 Q So Detective Metz pointed out the fact that Mr. Brown
7 had targets was not any basis for reasonable
8 suspicion, correct?

9 A I believe so. And it should have been -- if it was
10 that big of a deal, it should have been articulated a
11 lot sooner and handled a whole lot sooner.

12 Q Right. So the -- I'm a deer hunter. Are you a deer
13 hunter?

14 A I tried it for the first time last year.

15 Q Okay. I'm assuming you target shoot?

16 A Yes, sir.

17 Q Have you ever had targets in the back seat of your
18 car?

19 A Yes, sir.

20 Q And part of the constitutional training you're aware
21 of is that people have a constitutional right to have
22 a gun, correct?

23 A Yes, sir.

24 Q People have a constitutional right to go deer hunting,
25 correct?

1 A Yes, sir.

2 Q People have a constitutional right to have targets
3 with bullet holes shot in the back, correct?

4 A Yes, sir.

5 Q And the fact that there may be target holes in the
6 back of anybody's car doesn't constitute a reasonable
7 suspicion of a crime, correct?

8 A Yes, sir. Again --

9 Q And Detective Metz was very clear at this that the
10 fact that they had targets does not constitute any
11 basis of reasonable suspicion that he was armed,
12 correct?

13 A Yes, sir. Like I said, articulation. It has to be a
14 combination of things, not just targets in your back
15 seat.

16 Q And so I want to know, you saw, when they played the
17 video, or maybe you didn't. Do you know which video
18 they played?

19 A I don't recall whose body camera it was.

20 Q Okay.

21 A I mean...

22 Q Was it visible on the body camera, the contact between
23 Sergeant Mahnke and Sergeant Krueger, when they sort
24 of nodded and they sort of led the charge at Mr.
25 Brown?

1 A I don't --

2 MS. GEHLING: Objection. Mischaracterizes
3 testimony.

4 A I don't recall that, exactly what was said, or if they
5 even met. I mean, like I said, it was a while back.

6 BY MR. THOMSEN:

7 Q But I want to be -- Detective Metz was very clear and
8 critical of Sergeant Mahnke and Sergeant Krueger's
9 escalation based on targets, correct?

10 A Yes, sir. And I know they were debating back and
11 forth like in our discussions.

12 Q And Detective Metz was pointing out that you can't go
13 from targets to asking about guns, correct?

14 A Yes, sir.

15 Q Did you ever see or know what Sergeant Mahnke and
16 Sergeant Krueger were disciplined for?

17 A I do not know. I know that one got 15 days and one
18 got 10 days of suspension. And that's the only thing
19 I know about it.

20 Q Okay. So if I'm understanding you clearly, Detective
21 Metz was very clear that Sergeant Krueger and Sergeant
22 Mahnke's inappropriate use of the target and then
23 asking about the concealed carry put other officers in
24 a situation where they didn't know what was going on,
25 correct?

1 MS. GEHLING: Objection. Mischaracterizes
2 testimony.

3 BY MR. THOMSEN:

4 Q You're nodding your head.

5 A Sounds correct.

6 Q And just so I'm very clear, Detective Metz pointed out
7 clearly that as a result of Sergeant Mahnke's and
8 Sergeant Krueger's conduct, that led to Mr. Brown
9 being taken down and tased, correct?

10 A Yes, sir.

11 Q And Detective Metz said specifically Mr. Brown should
12 never have been taken down or tased, correct?

13 MS. GEHLING: Objection. Foundation.

14 A I do not recall if those were the exact words he said,
15 but, I mean, like when supervisors -- like, for
16 example, if I'm an officer there and I don't know what
17 they see, and all of a sudden they start asking about,
18 oh, you have CCW, you know, you're -- you know, there
19 goes that threat assessment goes up, and then all
20 hands in your pocket. So I believe, you know, the
21 supervisors, I think they alarmed the officers. They
22 got their guard back up, which in a sense made the
23 situation even more of what it shouldn't have been. I
24 don't know if you understand exactly.

25 BY MR. THOMSEN:

1 Q I do, and that's what I'm getting at. Detective Metz
2 may not have used the lang-- but the message Detective
3 Metz put out at that training was that as a result of
4 Sergeant Mahnke's and Sergeant Krueger's conduct, Mr.
5 Brown was inappropriately touched, taken down, and
6 ultimately tased and booked, correct?

7 A Yes, sir. That's the sense I got from him.

8 Q And the whole point of the training was that this is
9 conduct that this department shouldn't engage in,
10 correct?

11 A Yes, sir. It's considered remedial, so almost like a
12 discipline.

13 Q What other pauses do you recall going through the
14 video?

15 A I believe when Collins stood on his leg.

16 Q Would it be fair to say Detective Metz said that was
17 unreasonable use of force?

18 A Yes, sir.

19 Q What else?

20 A Yeah, spoke about that. Obviously, if you're going to
21 stand on someone's leg, you better articulate why
22 you're doing it. You know, if someone is kicking at
23 you and fighting, but obviously that wasn't taking
24 place, then that would be an example, or maybe you
25 don't want your face down there. But I think -- this

1 A I can't say that for sure, sir, because, like I said,
2 the supervisor has got these other officers that
3 weren't looking in the car, got their threat
4 assessment level up, that there possibly could be a
5 firearm or -- you know, when the officers, "Are you
6 CCW?" And so, like I said, from my -- for me
7 speaking, and I'm over here and the officers or
8 supervisor is over here and says, "Hey, oh, do you
9 have a CCW?" My threat assessment goes up like, okay,
10 it's possible he has a gun. I mean, is it wrong how
11 they got that information? Yeah, obviously it was.
12 But --

13 BY MR. THOMSEN:

14 Q So just to be clear, anything that escalated that
15 would have made anyone afraid came from the sergeants
16 and not Mr. Brown, correct?

17 MS. GEHLING: Objection. Mischaracterizes
18 testimony, and foundation, also. He just said he
19 wasn't there.

20 A If it was me, correct. Yes, sir.

21 MR. THOMSEN: Let's take a minute here. I
22 need to use...

23 THE WITNESS: No problem.

24 THE REPORTER: Off the record.

25 (Off the record)

1 MS. GEHLING: Object to foundation. He's
2 not Officer Grams.

3 MR. THOMSEN: I didn't ask --

4 Q What I'm saying is, you were there, right? Officer
5 Grams was there, right?

6 A Yes, sir.

7 Q So when Detective Metz said, "You should not have
8 touched Mr. Brown," what did Officer Grams say?

9 A I don't recall everything he said, but he was like
10 offended by it, like he felt like he was calling him
11 out. And he didn't take -- how can I say it? Like he
12 didn't take it kindly, like he didn't take the
13 criticism properly.

14 Q He didn't accept any responsibility would be another
15 way.

16 MS. GEHLING: Objection. Mischaracterizes
17 testimony.

18 A From what it appeared.

19 BY MR. THOMSEN:

20 Q He was not willing to accept accountability for his
21 misconduct, correct?

22 A From what it appeared.

23 Q So from your -- what you witnessed, Sergeant Krueger
24 accepted responsibility for his inappropriate conduct,
25 correct?

1 MS. GEHLING: Objection. Vague as to time.

2 A I don't exact -- I don't remember his exact words, but
3 he did apologize to the officers there.

4 BY MR. THOMSEN:

5 Q And from your perception, your vantage point, that was
6 Sergeant Krueger accepting responsibility and
7 accountability for his errors that night, correct?

8 A Yes, I believe so.

9 Q Now, Sergeant Mahnke was a different -- took a
10 different approach. He never accepted accountability
11 or responsibility, correct?

12 MS. GEHLING: Objection. Foundation.

13 A Not that I recall.

14 BY MR. THOMSEN:

15 Q What do you know about the relationship between
16 Sergeants Krueger and Mahnke?

17 A I believe they were -- I think they worked together.

18 THE WITNESS: I'm sorry. I keep moving,
19 sir.

20 THE REPORTER: That's okay.

21 A They worked together at District 5, I know that, like
22 before they were supervisors. I don't know how deep
23 their friendship goes or anything like that, but I
24 know they were -- they used to work together at
25 District 5. That's as far as I know.

1 ever see him do anything threatening?

2 A From my point of view, no.

3 Q You had been with the department -- when did you
4 start? I'm sorry.

5 A October 17th, 2011.

6 Q And your last day as an officer was when?

7 A I was fired on September 12th.

8 Q Of 2018?

9 A Yes, sir.

10 Q And during your almost seven years tenure with the
11 department, were you aware of any officer that had
12 ever been disciplined for excessive use of force?

13 A I believe, or from what I know, Jim Collins, or James
14 Collins.

15 Q Other than James Collins?

16 A No, not to my knowledge.

17 Q What do you know about the discipline that James
18 Collins had received for excessive use of force?

19 A Just hearing about his reputation. I can't give you a
20 case-by-case because, you know, they don't really
21 release those details anyways. You kind of just hear
22 it. I can't give you like an example.

23 Q Okay. So just during your seven years, you were aware
24 of one officer that had been disciplined for excessive
25 use of force and that was Officer Collins, correct?

1 A Yes, sir.

2 Q And that's the same Officer Collins that was standing
3 on Mr. Brown's leg, correct?

4 A Yes, sir.

5 Q During your almost seven-year tenure with the
6 department, were you aware of any officer that had
7 been fired for race-based conduct?

8 A No, none to my knowledge.

9 Q During that seven-year tenure point of time, were you
10 ever aware of anybody that was disciplined in any way
11 for race-based conduct?

12 A Not to my knowledge. Not just based on that.

13 Q In terms of training that you received during that
14 seven-year point in time, what training do you recall
15 that focused in on how to act appropriately, you know,
16 on race-based matters?

17 A It would be from day-one in the Academy and they
18 stressed ethics.

19 Q So the ethics was stressed to, what, treat everybody
20 equally?

21 A Yeah. Regardless of sexual orientation, you know, any
22 kind of diversity or racial ethnicities, religious
23 beliefs.

24 Q One of the documents that you had reviewed is Andrade
25 26, the Fair and Impartial Policing. Do you know when

1 A Yes, sir.

2 Q At any point in time did you learn in terms of why the
3 policy was changed to add "based on credible
4 evidence"?

5 MS. GEHLING: Object to foundation.

6 A They never let us know. They just throw the revised
7 version out there.

8 BY MR. THOMSEN:

9 Q Okay. And the revised version, you've actually never
10 seen, correct?

11 A Yeah. That came on after they fired me.

12 Q All right. And looking at the policies on Citizen
13 Contacts, Arrest Authority, Electronic Control
14 Devices, or the SOP on Use of Force, there is nothing
15 in here in terms of the training that would have
16 justified Officer Collins' conduct standing on Mr.
17 Brown's leg, correct?

18 A To my knowledge, no.

19 Q And based on what the training and Detective Metz
20 pointing out, there is nothing articulated in these
21 policies that would justify the conduct of the
22 officers in taking Mr. Brown down and tasing him,
23 correct?

24 A Can you say that again one more time, sir?

25 MR. THOMSEN: I better read it back.

1 Q 2.03, "Failure to intervene when a violation of the
2 Code of Conduct occurs or is about to occur shall be
3 treated the same as if the member committed the
4 violation." See that?

5 A Yes, sir.

6 Q When you observed Collins standing on Mr. Brown's leg,
7 why didn't you intervene to protect Mr. Brown?

8 A I believe I was looking at his I.D. and wasn't -- I
9 guess I didn't think about it quite at the moment.

10 Q Would you have --

11 A Kind of once I reflected afterwards, like, really?

12 Q Yeah. You were fully aware that Collins was standing
13 on his leg, right?

14 A Yeah. Now that I think about it. Like I said, I had
15 other stuff on my mind. I really wasn't paying
16 attention. I don't know why he was put down or
17 decentralized in the first place. I didn't get all
18 the key details till afterwards.

19 Q You agree that per the code, you should have
20 intervened and told Collins to get his foot off of Mr.
21 Brown, correct?

22 A Yes, sir.

23 Q And that's because under, if you look at 08, 4.03,
24 "Personal failure to intervene to prevent or stop
25 misconduct when there is an opportunity to do so

1 (Exhibit 38 identified)

2 Q I'm going to show you what's been marked as Andrade
3 Exhibit 38. This is a letter that went to, among
4 others, Chief Morales on May 25th, 2018. Do you see
5 that?

6 A Yes, sir.

7 Q On the second page, this is a letter from me to the
8 chief. I say, "I further request that you preserve
9 any and all evidence including all the Facebook and/or
10 social media entries posted by the individual officers
11 relating to this incident or to Mr. Brown as well as
12 to any other use of force incident." Did I read that
13 correctly?

14 A Yes, sir.

15 Q Okay. Between May 25th, 2018 and June 19th, 2018,
16 when you shut down your Facebook page, did the chief
17 ever contact you to preserve your Facebook?

18 A No.

19 Q Now, you heard about the lawsuit, correct? It was
20 filed June 19th, correct?

21 A Yes, sir. Yes, sir.

22 Q And you learned about it that day, and that night you
23 took down your Facebook post, correct?

24 A Yes, sir.

25 Q As a law enforcement officer, you know of your

1 MS. GEHLING: Objection. Foundation.

2 A I don't know.

3 BY MR. THOMSEN:

4 Q I'm going to show you what's been marked as Exhibit
5 13. I want you to look at that and tell me whether
6 there are any other posts, race related or Sterling
7 Brown related, that were on your Facebook page at the
8 time you scrubbed it clean after the lawsuit was
9 filed.

10 A I believe that was it.

11 Q If Chief Morales or someone else in the command staff
12 had contacted you between May 25th, 2018 and June
13 19th, 2018, when we filed the lawsuit and you scrubbed
14 your Facebook page, and instructed you not to take it
15 down, you would have followed that order, correct?

16 A Yes, sir. I'm still an employer -- still employed
17 with them, I'd listen.

18 Q But to be fair to you, no one told you at any point in
19 time before you scrubbed it to preserve the evidence.

20 A No.

21 MR. THOMSEN: Okay. Let's go off the record
22 for a minute.

23 THE REPORTER: Off the record.

24 (Off the record)

25 THE REPORTER: We're back on the record.

1 A The transcript thing.

2 Q Okay. So you were provided with this transcript
3 before today.

4 A Yeah. I'm sorry. Yes, sir.

5 Q Okay. And, but you weren't ever given the bodycam to
6 compare it to, correct?

7 A Yes, sir.

8 Q When did you last review the Request to Admit that is
9 marked as Exhibit 39?

10 A I believe Tuesday.

11 Q There is a reference at page 3 that your bodycam
12 captures Mr. Brown saying, "You're stepping on my
13 ankle for what?" and Collins saying, "So you don't
14 kick us," right?

15 A Yes, sir.

16 Q And this is what we were talking about a few minutes
17 ago. You agree you should have intervened immediately
18 to protect Mr. Brown, correct?

19 A Yes, sir.

20 Q Did you know about Mr. Collins' prior use of force
21 violation at the time that you saw him standing on Mr.
22 Brown's ankle or leg?

23 A Not officially. I mean, you hear reputations for
24 officers.

25 Q Okay. But you had heard about that before this.

1 A Yes, sir.

2 Q So you're sitting there with a fellow officer that you
3 know has been disciplined for excessive use of force
4 previously and you don't take steps to protect Mr.
5 Brown, correct?

6 MS. GEHLING: Objection. Argumentative.

7 A I should have said something. There was other stuff
8 going on, so... But, yeah, I should have.

9 MR. THOMSEN: Okay. All right. That's all
10 I have, Mr. Andrade. Thank you very much for
11 your time today.

12 MS. GEHLING: I just have two
13 clarifications. They're very, very quick.

14 E X A M I N A T I O N

15 BY MS. GEHLING:

16 Q Do you recall earlier today you -- Mr. Thomsen asked
17 you, he said you observed Mr. Brown being surrounded,
18 tased, stepped on, etcetera, and you agreed? Do you
19 recall that?

20 A Yes, sir. Or, yes, ma'am. I'm sorry.

21 MR. THOMSEN: Objection. Foundation,
22 mischaracterization. I don't know what question
23 you're talking about.

24 MS. GEHLING: True.

25 Q My question is, when you answered that, were you